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STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6397

August 2, 1984

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Mrs. Jean R. Wallin
Chairman
N. H. Liquor Commission
Storrs Street
Concord, New Hampshire 03301

Dear Mrs. Wallin:

You requested an opinion from this office concerning the extent of the Commission's ability to regulate the activities of persons who distribute pamphlets or collect money at state liquor stores. As discussed in detail below, it is our opinion that the Commission may only impose reasonable time, place and manner restriction on such activities.

The activities which you describe are expressive activities involving "speech" protected by the First Amendment. United States v. Grace, 75 L.Ed.2d 736, 743 (1983); Schaumburg v. Citizens for Better Environ., 444 U.S. 620, 632 (1980). The extent to which activities which are protected under the First Amendment may be restricted depends on the place in which those activities occur. Several recent Supreme Court cases have discussed the distinctions between different types of public property and the extent to which speech may be regulated.

Public places historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be "public forums." As such, the government may only enforce reasonable time, place and manner regulations as long as the restrictions



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are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. United State v. Grace, 75 L.Ed.2d 736, 743-744 (1983). A second category consists of public property which the state has opened for use by the public as a place for expressive activity. As long as a state retains the open character of the facility, it is bound by the same standards as apply in a traditional public forum. Perry Ed. Assn. v. Perry Local Ed. Assn., 74 L.Ed.2d 794, 805 (1983). A final category is public property which is not by tradition or designation a forum for public communication. For these places, in addition to time, place and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. Id.

It appears that state liquor stores fall into the second category of public property. While the store is not a traditional forum such as a street or a park, you have indicated that the Commission has in practice allowed the dispensing of information and collection of money on state-owned property outside state liquor stores. As long as the state allows this activity to occur, reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. Id.

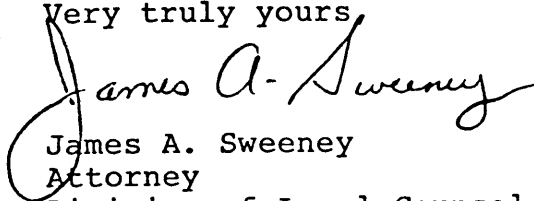
In applying those standards to your specific question, the Commission may reasonably restrict the place and manner of soliciting at the stores to ensure that the activity does not disrupt the function of the store, or harass customers, such as by limiting the activity to a particular area. Any restrictions imposed must be enforced against all solicitors. Should the Commission desire to impose a restriction applicable to all stores, it should consider adopting it as a regulation. This office would gladly review any proposed regulation.

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Finally, it should also be noted that RSA 320:20 requires persons soliciting money to obtain authorization from the Division of Welfare.

I trust that this has been responsive to your question. If you have any further questions, please feel free to contact me.

Very truly yours,


James A. Sweeney
Attorney
Division of Legal Counsel

JAS/clp
82-65-I